

Appellate Court Directs Parole Board to Supply Wrongfully Withheld Parole Documents to Brinks Robbery Participant Judith Clark

November 27, 2018 (New York) – International law firm Proskauer announced today that the New York Appellate Division, First Department, today ordered the New York State Parole Board to produce wrongfully withheld documents to parole applicant Judith Clark, one of the participants in the 1981 Brinks' robbery which resulted in the deaths of two police officers and a Brinks guard. The Court further ordered the Parole Board's Appeals Unit to hold a new administrative appeal hearing after the documents had been produced.

In April, State Supreme Court Justice John Kelley overruled the Parole Board denial of parole and its Appeals Unit that had affirmed that decision. He ordered the Parole Board to hold a new hearing for Ms. Clark because it had wrongfully denied her access to key documents, failed to adequately explain the reasons behind its April 2017 parole denial, based its decision on impermissible factors, and failed to take other required factors into account. On the Parole Board's appeal of that order the Board admitted it improperly withheld documents from Ms. Clark, but argued that its failure to do so was harmless error. The Appellate Division disagreed and ordered that the documents be produced to Ms. Clark. However, rather than deciding the merits of the appeal, as Ms. Clark had urged, the Appellate Division annulled the Appeals Unit's affirmation of the parole denial and ordered the Appeals Unit, following the production of the documents to Ms. Clark, to reconsider its affirmation of the Parole Board's initial parole denial.

Ms. Clark's attorneys, Michael Cardozo of Proskauer, and Professor Steven Zeidman of CUNY Law School, issued a statement saying: "While we are pleased the Appellate Division recognized that the Parole Board acted wrongfully in withholding documents from Ms. Clark to which she was clearly entitled, and that such action interfered with her ability to exercise her rights to a fair and just parole process, we are disappointed that the Appellate Division did not reach the merits of the case and affirm the ruling that the Parole Board had improperly denied parole. As a result, the decision injures Ms. Clark's right to have a new, prompt, and fair parole hearing. However, we hope that when it reviews the entire record, including the documents that the Appellate Division found had been wrongfully withheld, the Parole Board's Appeals Unit will recognize that Ms. Clark should be granted a new parole hearing that complies with the law."

In addition to the new hearing before the Appeals Unit, and notwithstanding the Court's decision, Ms. Clark is entitled under the law to a new parole hearing in April 2019.

Ms. Clark has been in prison for more than 37 years and is the second-longest serving woman in a New York prison. Many of the other participants in the crime, including several who were more directly involved with the murders, have previously been released. In 2016, Governor Cuomo granted Ms. Clark clemency after personally interviewing her, noting her "exceptional strides in self-development." Governor Cuomo's clemency grant made Ms. Clark immediately eligible for parole.

In April 2017, the Parole Board ruled, notwithstanding the undisputed fact that Ms. Clark was completely rehabilitated, posed no threat to society, and whose parole application was supported by hundreds of people she has known and worked with, that parole should be denied because of the "seriousness of the crime" and "public opposition" to her release. That decision was later affirmed by the Administrative Appeals Unit of the Parole Board. In setting aside that decision the Supreme Court ruled, in a decision the Appellate Court declined to review on the

merits, that the Parole Board acted improperly by taking a “backward-looking approach” to parole, and failing to explain “why the numerous letters of support from those who personally know Ms. Clark are outweighed by the opposition letters submitted by the community.”

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